



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

April 17, 1953

Hon. Allan Shivers
Governor of Texas
Capitol Station
Austin, Texas

Letter Opinion No. MS-22

Re: The constitutionality of
House Bill 352 of the
53rd Legislature.

Dear Governor Shivers:

You have requested an opinion on the constitutionality of House Bill 352 of the 53rd Legislature making it a penal offense to shoot, fire or discharge any rifle or pistol "in, on, over, above, across or along the waters of Lake Nasworthy or any part thereof, or in, on, over, above, across or along the waters of the North Concho Lake or any part thereof," which are located in Tom Green County, Texas.

Section 56 of Article III of the Constitution of Texas provides in part:

"The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law . . . where a general law can be made applicable . . . provided that nothing therein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of the game and fish of this State in certain localities."

The emergency clause of House Bill 352 provides:

"The fact that said lakes are now and will be continually visited daily by a great many people and the firing of firearms in, on, over, above, across or along said lakes or any part thereof is highly dangerous and a hazard to the people enjoying the privileges of said lakes, creates . . ."

The emergency clause reveals that House Bill 352 is not intended to be for the preservation of game

Hon. Allan Shivers, page 2 (MS-22)

and fish in this State or any locality, but is for the protection of people visiting Lake Nasworthy and the North Concho Lake. Therefore the exception contained in Section 56 of Article III of the Constitution of Texas is not applicable to House Bill 352.

Section 19 of Article I of the Constitution of Texas provides:

"No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land."

It is the well settled law of this State that penal acts which fail to accord equal rights and equal protection under the law or a law which makes different punishments of the same identical criminal act in the political subdivision violates Section 19 of Article I of the Constitution of Texas. Ex Parte Carson, 159 S.W.2d 126 (Tex.Crim.App. 1942); Ex Parte Ferguson, 132 S.W.2d 408 (Tex.Crim.App. 1939); Ex Parte Sizemore, 8 S.W.2d 134 (Tex.Crim.App. 1928).

Although "it is the sole providence of the Legislature to determine whether or not a general law can be made applicable" (Lamon v. Ferguson, 213 S.W.2d 86 (Tex.Civ.App. 1948)), a criminal law must operate on all citizens of this State alike and give equal protection to all of our citizens alike. Ex Parte Ferguson, supra.

Since House Bill 352 provides a penalty for the discharging of a rifle or pistol in certain described areas which is not based on any characteristics legitimately distinguishing it from any other area, thereby dealing differently with persons committing the same act in different areas of the State, it is our

Hon. Allan Shivers, page 3 (MS-22)

opinion that the law deprives a person of his liberty without due course of the "law of the land" and is unconstitutional.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By
John Reeves

Sam C. Ratliff
Assistants

JR:SCR:am